

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
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Amendment of Parts 1 and 22 of the Commission's)	WT Docket No. 12-40
Rules with Regard to the Cellular Service,)	
Including Changes in Licensing of Unserved Area)	RM No. 11510
)	
Amendment of the Commission's Rules with)	
Regard to Relocation of Part 24 to Part 27)	
)	
Interim Restrictions and Procedures for Cellular)	
Service Applications)	

COMMENTS OF BROADPOINT, LLC

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May 15, 2012

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COMMENTS OF BROADPOINT, LLC

Broadpoint, LLC ("Broadpoint") hereby responds to the Notice of Proposed Rulemaking in this docket, adopted February 15, 2012 ("Notice").¹ Broadpoint, the cellular licensee serving the Gulf of Mexico, owns, operates and maintains the first and only GSM/GPRS/Edge offshore wireless network, covering more than 100,000 square miles in the Gulf of Mexico. Broadpoint's transmitters are located on oil rigs and drilling platforms, providing coverage and services critical to large energy businesses, marine and fishing companies, public safety operations, spill cleanup and coastal restoration workers, seismic prediction services, universities, recreational and charter boaters and fishermen.

¹ / *In the Matter of Amendment of Parts 1 and 22 of the Commission's Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area, Notice of Proposed Rulemaking and Order, Amendment of the Commission's Rules with Regard to Relocation of Part 24 to Part 27, Interim Restrictions and Procedures for Cellular Service Applications, WT Docket No. 12-40, RM No. 11510 (Feb. 15, 2012) ("Cellular Licensing Notice" or "Notice").*

Broadpoint acquired and now owns and operates the Gulf cellular systems previously licensed to Petroleum Communications (“PetroComm”) and Bachow/ Coastel. As such, Broadpoint has a strong interest in the rules governing license boundaries relating to the Gulf.

I. Broadpoint Supports the Commission’s Proposal to Exempt the Gulf of Mexico Service Area (GMSA) from the Transition to a Geographic-based Model and Requests Clarification to Reaffirm the Existing GMSA Licensing Regime.

Broadpoint commends the Commission for proposing to exempt the Gulf of Mexico Service Area (GMSA) from the transition of the Cellular Service to a geographic-based model.²

The Commission stated:

The existing Cellular licensing regime for the GMSA was carefully developed by the Commission after taking into account many prior disputes between Gulf-based and adjacent land-based carriers, multiple prior Commission decisions, court litigation and judicial rulings,³ as well as the unique circumstances of providing Cellular service in the Gulf region. We propose not to alter the existing regime, except that we propose to subject GMSA licensees to our proposed field strength limit, discussed below.

Cellular Licensing Notice, at ¶ 53. This analysis is accurate, takes into account judicial⁴ and agency proceedings, and should be adopted in the Commission’s final decision.

The existing licensing regime for the GMSA was constructed by the Commission through and in consideration of lengthy proceedings, careful analysis, review of engineering studies and testing results, and a remand from appeals court litigation. The Commission’s prior analysis was refined correctly to meet real world needs, through the work of Commission engineers, attorneys, and economists examining data, documents and studies over the course of years.

² / *Notice*, at ¶ 26.

³ / *Id.*, citing *In the Matter of Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico*, Amendment of Part 22 of the Commission’s Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, *Report and Order*, WT Docket No. 97-112, CC Docket No. 90-6, ¶ 35 (adopted Dec. 21, 2001, rel. Jan. 15, 2002) (*2002 GMSA R&O*).

⁴ / *See, e.g., Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164 (D.C. Cir. 1994) (“*PetroComm*”).

Broadpoint asks the Commission to clarify that it is retaining the entire licensing regime that has been applied to the GMSA, including the requirement that land-based carriers must protect the GMSA. Section 22.912 of the Commission's Rules was amended in the FCC's 2003 Order on Reconsideration so as to "clarify that land-based carriers are precluded from extending their SABs into any part of the GMEZ, whether served by the applicable Gulf carrier or not, without the Gulf carrier's consent,"⁵ and the rule changes proposed in the *Notice* would remove those requirements to different rule sections. The requirements of protection and prior consent are essential in light of the transient nature of Gulf-based cellular transmitters, as recognized in the *PetroComm* decision by the D.C. Circuit. We request that the Commission reconfirm its commitment to protection of the GMSA.

II. The Proposal to Subject GMSA Licensees to a New Field Strength Limit Must Not Be Adopted

For the same reasons of prior years of careful and accurate analysis and past litigation, Broadpoint urges the Commission not to adopt the proposal to subject GMSA licensees and Cellular licensees bordering the GMSA to the proposed new field strength limit. The FCC has recognized that "cellular signals transmitted over water typically have stronger propagation characteristics ...than comparable signals transmitted over land."⁶ To change the field strength limits in connection with operations in or bordering the GMSA would disrupt a balanced system unique to the Gulf, which was litigated through the D.C. Circuit, finalized in a reasoned Commission decision on remand and memorialized in years of privately negotiated service area boundary agreements relying upon the existing water and land formulas. (In addition, as

⁵ / See 2003 Order on Reconsideration, at ¶ 31.

⁶ / 2002 GMSA R&O at ¶ 35; see also In the Matter of Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico, Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, [Order on Reconsideration](#), WT Docket No. 97-112, CC Docket No. 90-6, at ¶ 2 (2003) ("2003 Order on Reconsideration").

discussed *infra.*, we suggest that the Commission clarify that existing boundary agreements are not overruled by the anticipated decision in this docket, and will continue to use the land and water formulas in existence when executed, unless their terms provide otherwise.)

A. Background: The Field Strength Limit in the Gulf Was Developed Carefully and In Relation to the Field Strength Limit for Land-based Licensees

The background of the field strength limit bifurcation relating to Gulf of Mexico boundaries rests in numerous proceedings that culminated in a reasoned, careful 2003 FCC decision on remand. As the Commission observes, the GMSA licensing regime was developed by taking into account many prior disputes, Commission decisions, court litigation, judicial rulings, and the unique circumstances of providing Cellular services in the Gulf.⁷

In 1992, the Commission adopted two separate mathematical formulas to define the service area boundaries (SABs) of facilities operated by land-based and water-based licensees.⁸ In 1994, the D.C. Circuit vacated the use-or-lose rule that defined the Gulf carriers' cellular geographic service areas (CGSAs) based on their areas of actual service, and remanded to the Commission for re-evaluation, concluding that the Commission had not adequately explained why it was limiting Gulf carriers to areas of actual service.⁹ The Commission subsequently stated:¹⁰

The effect of the remand was the restoration of the original licensing areas of the Gulf carriers, regardless of the location of their platform-based cell sites at any particular time.

⁷ / *Cellular Licensing Notice*, at ¶ 53.

⁸ / *See* Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket 90-6, *Third Report and Order and Memorandum Opinion and Order on Reconsideration*, 7 FCC Rcd 7183 (1992) ("*Unserved Area Third Report & Order and MO&O*").

⁹ / *See Petrocomm*, 22 F.3d 1164 at 1172; *see also 2003 Order on Reconsideration*, at n.48.

¹⁰ / *See 2003 Order on Reconsideration* at ¶ 4.

However, the remand did not vacate other aspects of the rule, such as the formula used by the Gulf carriers to determine their service area boundaries.

Accordingly, the agency conducted a proceeding on remand. The Commission in 2002 revisited Gulf license areas and affirmed its decision to adopt different service area boundary calculation formulas for signal propagation over land and water: the 32 dbu "land" formula of Section 22.911(a)(1)) and the 28 dbu "water" formula of Section 22.911(a)(2). The Commission stated:

The use of different formulas recognized that cellular signals transmitted over water typically have stronger propagation characteristics (*i.e.*, can be received at greater distances from the transmitter) than comparable signals transmitted over land, which are attenuated by variations in terrain, buildings, trees, and other obstacles.¹¹

The agency's decision recognized carriers' right to rely upon formulas that had been the basis of agreements for years. The Commission stated that its decision would avoid conflicts and disruption to privately negotiated terms:

Finally, retaining the existing SAB formulas is consistent with our overall decision to maintain the existing relationship between land and Gulf carriers in the Western Gulf as the basis for negotiated solution of their operational conflicts. The Gulf carriers have been using the water formula to depict SAB contours for their facilities operating in the Gulf since the formula was adopted, while the land carriers have used the land-based formula for their facilities. *Consequently, changing the SAB definitions at this point could lead to one side or the other unilaterally increasing their transmitter power under the revised definitions, which could upset existing agreements and create new conflicts.*

2002 GMSA R&O, at ¶ 36. Accordingly, the FCC retained the water and land-based two-formula system. We ask that the Commission clarify that existing boundary agreements are not overruled by the anticipated decision in this docket, so as to avoid a lack of clarity that could lead to future disputes.¹²

¹¹ / 2002 GMSA R&O, at ¶ 35.

¹² / We suggest that the Commission clarify, similar to a recent decision regarding existing interconnection agreements, *see* WC Docket No. 05-337, Developing an Unified Inter-carrier Compensation Regime, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161 (rel. November 18, 2011), that existing agreements are not overruled by the anticipated decision in this docket. The Commission should state that such agreements will continue to

Carriers have relied upon this bifurcated system for two decades now. Changing the system to adopt parallel formulas for water and land-based propagation would harmfully impact Gulf-based transmissions more than land-based transmissions because signals being transmitted by land-based carriers over water (utilizing their coastal base stations, which send signal out over the Gulf waters) will take advantage of the new signal strength, and in light of the propagation characteristics of the water over which they are reaching, will reach farther into the Gulf market than previously. The rule would inherently advantage land-based licensees, enabling them to acquire additional customer revenues at the boundaries where their signals intersect with those of Gulf-based licensees.

Accordingly, Broadpoint suggests that the Commission, as it has done elsewhere in the new proposed rules, should separately categorize the licenses that border the Gulf and, for these licenses, the existing signal strength rules¹³ would still apply.

B. The FCC Must Continue Applying Existing Signal Field Strength Limits to Land-Based Licenses That Border the Gulf and to Gulf-Based Licenses. Raising The Limits Would Disproportionately Benefit Land-based Carriers Adjoining the Gulf And Would Disadvantage Gulf-Based Operations Supporting Vital Public Safety, Energy and Maritime Business Communications Through Hurricanes, Oil Spills And Other Critical Events on the Gulf of Mexico.

In order to understand the problem, it is important to understand three points.

First, traffic in the Gulf is imbalanced. Due to the sheer size of land-based carriers and their correspondingly enormous customer bases, in comparison with the size of the Gulf license area and the Gulf-based customer base, the traffic traveling in the Gulf is and always will be

utilize the land and water formulae in existence at the time of their execution, unless their terms provide for the use of different formulas, until any renegotiation that the parties may agree upon. To state otherwise would be to overrule the meeting of the minds of the parties and leave in question legal applicability after adoption of a decision in this docket – thus potentially leading to burdensome actions or dispute resolution to resolve such questions.

¹³ / The FCC is properly proposing to retain Section 22.911, which sets forth the water/land field strength rules, 47 C.F.R. § 22.911.

primarily “roamers”; that is, customers who are roaming and not on their home network. In other words, Gulf cell sites mostly host the customers of other carriers.

Another important point is that when a carrier raises its signal field strength limit at its boundaries, its customer will remain on that “home carrier’s” signal for longer than previously. The primary variable that makes a difference in the location where customer handoff¹⁴ occurs is the strength of the signal from the customer’s home carrier network. The increased signal strength from the carrier towards which the customer is moving does not “cancel out” or equivalently combat the “home carrier’s” signal earlier so as to make the customer change carriers in some other location. Given the unique propagation characteristics of the Gulf waters, a land-based carrier whose signal is aimed out over Gulf waters, as is often the case and is the situation of concern, can “hold onto” its customers who are moving south over the water longer than it can hold onto its customers traveling over land. Thus, when signal strength limits are increased, increased signal strength will result in a magnified effect on the distance before subscriber handoff, due to the water’s unique propagation characteristics.

Consequently, if the signal field strength limits were raised at the boundaries of all service areas, including the GMSA, the change would unequally benefit land-based carriers rather than water-based carriers. This is because the change permits all carriers’ networks to “hold onto” their “home customers” for longer as they move towards the boundary where they will be “handed off” to another company’s network. Because the carriers’ traffic flow is imbalanced with regard to the Gulf, as previously explained, the one or two land-based networks

¹⁴ / The term “handoff” is used here for simplicity. The technical mechanism involves the Priority Roaming List (“PRL”) programmed into each customer’s handset. When the handset receives signal below neg113 for a certain amount of time (depending upon the GSM or CDMA protocol), the handset re-scans for signal and if it cannot find its home carrier’s signal, it looks for another carrier listed on the PRL and then is picked up on the network of the carrier towards which it is traveling.

which are the source of most of the traffic moving towards the Gulf would retain the traffic of an enormous preponderance of the Gulf traffic flow affected by this change. This would permit land-based carriers to retain their customers for longer, thus negatively impacting Gulf-based carriers and their business plans. The fact that Gulf-based carriers could also retain the traffic of their own customers for longer at their boundaries is dwarfed by the impact of the change to the much larger traffic flows that move towards the Gulf. This negative change would compound an already challenging business due to the unique operating environment of Gulf-based licensees.

Broadpoint provides mission critical communications to its customers and roamers that require extreme reliability. Broadpoint has played a vital role in disaster preparedness and disaster recovery applications during hurricanes in the Gulf Coast. Hurricanes and other violent weather on the Gulf, as well as rig relocations, emergency operations, and other services relating to energy operations, public safety, and coastal cleanup, require significant and constant revenue reinvestment in replacement of damaged equipment, helicopter arrangements in order to maintain the cell sites, and uniquely trained engineering crews. These specialized network needs require consistent and significant customer revenues simply to maintain critical operations.

By changing the signal strengths of licensees in and adjoining the Gulf, the land-based licensees' customers would stay on those land networks longer, and as previously explained, this means the preponderance of traffic would stay off the Gulf networks longer – thus generating far less ability for Gulf-based networks to reinvest and repair weather-damaged equipment. This would have a material and negative effect on the vital operations whose repair, maintenance and upkeep is reliant upon revenues from the current proportion of roaming traffic. Accordingly, Broadpoint urges the Commission to separately categorize the licenses that border the Gulf and

continue to apply the existing signal strength rules for those licenses as well as Gulf-based licenses.

III. Conclusion

In light of the foregoing, Broadpoint supports the Commission's proposal to retain the current Gulf of Mexico Service Area (GMSA) licensing scheme, and to clarify that it is retaining the required GMSA protection by land carriers relating to the decision, on remand from the D.C. Circuit, that the GMSA is not subject to use-or-lose rules. In addition, Broadpoint respectfully urges the Commission to retain the current field strength limits for land-based and water-based licensees in and bordering the Gulf of Mexico Service Area. This would avoid unfairly changing the longstanding balance of traffic and would permit Gulf-based licensees to maintain a reasonable and efficient level of reinvestment in network and operations, in order to sustain the Gulf communications of numerous business, nonprofit and governmental customers such as large oil and gas companies, marine and fishing operations, spill response and remediation companies, university marine research organizations, and certain U.S. Coast Guard vessels.

Respectfully submitted,

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